

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

MICHAEL LEE CHILDRESS, JR.,                      No. Civ. S-02-870 DFL GGH P  
Petitioner,    O R D E R  
v.  
MIKE KNOWLES, Warden,  
Respondent. /

Petitioner's motion for a certificate of appealability is granted as to whether the trial court denied petitioner his Fifth Amendment right to due process by issuing an erroneous general intent jury instruction and giving an ambiguous answer to a jury question regarding the mitigating effect of fear in a second degree murder charge. The court finds that reasonable jurists could disagree as to the prejudicial impact of the disputed instructions.

/

/

/

1 IT IS SO ORDERED.

2 Dated: April 9, 2007

3  
4  
5 /s/ David F. Levi  
6 DAVID F. LEVI  
7 United States District Judge  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28